MARIA CONCHITA HERNANDEZ # 70625-198
FEDERAL CORRECTIONAL CAMP
P.O. BOX 5100
ADELANTO, CA. 92301

FILED
DEC 14 2007
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY CP DEPUTY

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA RESPONDENT V MARIA CONCHITA HERNANDEZ PETITIONER	'07 CV 2355 J 96cr1262 J CRIMINAL CASE # 70625-198 § 2255 MOTION TO VACATE SET ASIDE OR CORRECT SENTENCE

§ 2255 MOTION TO VACATE SET ASIDE OR CORRECT SENTENCE

RESPECTFULLY SUBMITTED

Maria Conchita Hernandez

MARIA CONCHITA HERNANDEZ
FEDERAL CORRECTIONAL CAMP
P.O. BOX 5100
ADELANTO, CA. 92301

CR

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court	District SOUTHERN CALIFORNIA
Name (under which you were convicted) MARIA CONCHITA HERNANDEZ	Docket or Case No.: 96-01262-001-J
Place of Confinement: FEDERAL CORRECTIONAL P.O. BOX 5100 ADELANTO, CA. 92301	Prisoner No.: 70625-198
UNITED STATES OF AMERICA	Movant (include name under which you were convicted) MARIA CONCHITA HERNANDEZ

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

   (b) Criminal docket or case number (if you know): 96-1262-001-J

2. (a) Date of the judgment of conviction (if you know): SEPTEMBER 9 1996

   (b) Date of sentencing: MARCH 24, 1997

3. Length of sentence: 188 MONTHS

4. Nature of crime (all counts): 12-4-96 CONVICTED FOLLOWING JURY TRIAL OF EIGHT COUNT SUPERSEDING.

5. (a) What was your plea? (Check one)

   (1) Not guilty ☐ (2) Guilty XX (3) Nolo contendere (no contest) ☐

   (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐ [marked]

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No XX
8. Did you appeal from the judgment of conviction? Yes ☐ No XX
9. If you did appeal, answer the following:
   (a) Name of court: ____________________
   (b) Docket or case number (if you know): ____________________
   (c) Result: ____________________
   (d) Date of result (if you know): ____________________
   (e) Citation to the case (if you know): ____________________
   (f) Grounds raised: ____________________

   (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No XX
   If "Yes," answer the following:
   (1) Docket or case number (if you know): ____________________
   (2) Result: ____________________
   (3) Date of result (if you know): ____________________
   (4) Citation to the case (if you know): ____________________
   (5) Grounds raised: ____________________

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?
    Yes ☐ No XX
11. If your answer to Question 10 was "Yes," give the following information:
    (a) (1) Name of court: ____________________
    (2) Docket or case number (if you know): ____________________
    (3) Date of filing (if you know): ____________________

(4) Nature of the proceeding: ____________________

(5) Grounds raised: ____________________

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No XX

(7) Result: ____________________

(8) Date of result (if you know): ____________________

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: ____________________

(2) Docket or case number (if you know): ____________________

(3) Date of filing (if you know): ____________________

(4) Nature of the proceeding: ____________________

(5) Grounds raised: ____________________

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No XXX

(7) Result: ____________________

(8) Date of result (if you know): ____________________

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No XX

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: ______

______

______

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: INEFFECTIVE ASSISTANCE OF COUNSEL

______

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): SEE ATTACHED

______

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No XX

(2) If you did not raise this issue in your direct appeal, explain why: ______

______

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No XX

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: ______

Name and location of the court where the motion or petition was filed: ______

______

Docket or case number (if you know): ______

Date of the court's decision: ______

Result (attach a copy of the court's opinion or order, if available): ______

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No XX

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No XXX

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No XX

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: ______

Docket or case number (if you know): ______

Date of the court's decision: ______

Result (attach a copy of the court's opinion or order, if available): ______

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: ______

GROUND TWO: VIOLATION OF RIGHT TO APPEAL

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

SEE ATTACHED

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No XXX

(2) If you did not raise this issue in your direct appeal, explain why: ______

______

______

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐ XX

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: ______

Name and location of the court where the motion or petition was filed: ______

______

Docket or case number (if you know): ______

Date of the court's decision: ______

Result (attach a copy of the court's opinion or order, if available): ______

______

______

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒X

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No x☒x

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒x

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: ______

______

Docket or case number (if you know): ______

Date of the court's decision: ______

Result (attach a copy of the court's opinion or order, if available): ______

______

______

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: ______

GROUND THREE: VIOLATION OF PLEA AGREEMENT

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
SEE ATTACHED

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: ______

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: ______

Name and location of the court where the motion or petition was filed: ______

Docket or case number (if you know): ______

Date of the court's decision: ______

Result (attach a copy of the court's opinion or order, if available): ____________

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No XXX

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No XXX

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No XX

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: ____________

Docket or case number (if you know): ____________

Date of the court's decision: ____________

Result (attach a copy of the court's opinion or order, if available): ____________

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: ____________

GROUND FOUR: VIOLATION OF CONSTITUTIONAL RIGHTS

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

SEE ATTACHED

____

____

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ❑ No XX

(2) If you did not raise this issue in your direct appeal, explain why: ____________

____

____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ❑ No XX

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition ____________

Name and location of the court where the motion or petition was filed ____________

____

Docket or case number (if you know): ____________

Date of the court's decision: ____________

Result (attach a copy of the court's opinion or order, if available): ____________

____

____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ❑ No XX

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ❑ No XXX

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ❑ No XX

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: ____________

____

____

Docket or case number (if you know): ____________

Date of the court's decision: ____________

Result (attach a copy of the court's opinion or order, if available): ____________

____

____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: ____________________

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: ____________________

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No XX

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. ____________________

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: ____________________

(b) At arraignment and plea: ____________________

(c) At trial: ____________________

(d) At sentencing: ____________________

(e) On appeal: ____

____

(f) In any post-conviction proceeding: ______________________________

____

(g) On appeal from any ruling against you in a post-conviction proceeding: ____________

____

____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No XX

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No XX

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: ____

____

(b) Give the date the other sentence was imposed: ____________________

(c) Give the length of the other sentence: ____________________

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No XX

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.* THIS MOTION IS NOT WITHING ONE YEAR OF LIMITATION DO TO THE INEFFECTIVE ASSISTANCE OF COUNSEL

---

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

(1) the date on which the judgment of conviction became final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: ____________________

____

____

or any other relief to which movant may be entitled.

____

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 8 DECEMBER (month, date, year). 2007

Executed (signed) on 12-8-2007 (date).
12/8/2007

X Maria Conchita Hernandez

Signature of Movant

XXXXXXXXXXX MARIA CONCHITA HERNANDEZ

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion. ______________________________

____

____

IN FORMA PAUPERIS DECLARATION

____

[Insert appropriate court]

* * * * *

MARIA CONCHITA HERNANDEZ # 70625-198
FEDERAL CORRECTIONAL CAMP #
P.O.BOX 5100
ADELANTO, CA. 92301

UNITED STATES DISTRICT COURT FOR THE
DISTRICT COURT OF CALIFORNIA

UNITED STATES OF AMERICA **RESPONDENT** **V** **PETITIONER**	**CRIMINAL CASE # 96-01262-001 J** **MOTION TO VACATE SET ASIDE OR CORRECT SENTENCE BASED ON TITLE 28 § 2255**

COMES NOW PETITIONER appearing Pro Se, pursuant to the application Federal Rules adn Status and in support of Review and Correction of her sentence in this case , on the grounds that the sentence impose was determined and imposed in violation of the Fourth , Fifth , and Six Amendment.

PRO SE STATUS JUDICIAL INTERPRETATION AND CONSTRUCTION

The defendant is filing this Motion Pro Se, being indigent and having no legal training or experience and being limited by the factual constraints of incarceration the defendant is depending upon this court to review the facts, the remedies and to apply the appropriate rule or statutes the facts and requested relief dictate, See U.S.v Young 936 F.2d (Ca 9 1991)

MOTION AND MEMORANDUM IN SUPPORT OF 28 U.S.C 2255 PETITIONER AND FOR AND EVIDENTIARY HEARING

Petitioner moves the Court to **GRANT** her §2255 Petiion if necessary an evidentiary hearing on the basis that her Sixth Amendment right to counsel was violated. Petitioner request that the court accept this her petition and **GRANT** her an evidentiary hearing is deemed unnecessary by the court . Petitioner based upon the law and evidence presented in her memorandum request that her quilty plea be set aside.

STATUTORY LIMITATIONS

Petitioner Motion is in excess of the statutory period in which to petitioner for a Section § 2255 Petition due to her inability to understand the law of the United States Petitioner Sign the plea agreement not knowing the consequences for her signing the plea.

Petitioner requested counsel to file her appeal after the sentence impose and counsel did not file the appeal as per him there was nothing to appeal and this deprived petitioner's Constitutional Rights .

§2255 **FEDERAL CUSTODY REMEDIES ON MOTION ATTACKING SENTENCE**

A prisioner in custody under sentence of a court established by Act Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States or that the corut was without jurisdiction to impose such sentence , or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States Attoryne , grant a prompt hearing thereon, determine the issues and makes findings of facts and conclusions of law with respect thereto, If the court finds that the judgement was rendered without jurisdiction. or that the sentence imposed was authorized by law or otherwise open to collateral attack, or that there has been such a denial infringement of the constitutional rights of the prisoners to render the judgement vulnerable to collateral attack, or that there has been such a denial or infrigement of the constitutional rights of the prisone as to render the judgement vulnerable to collateral attack the court shall vacate and set the judgement aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

STATEMENT OF ISSUES UNDER CONSIDERATION

Petitioner respectfully requests that this court adjudicated the following issues of law as it considers the petitioner's application for relief pursuant to 28 U.S.C. § 2255

(a) **Fifth Amendment Due Process Abridgement:** Petitioner's conviction was obtained notwithstanding a breach by the Government of a specific plea agreement . While the contract of plea entered into by and between the Petitioner and the Government provided for an independent determination by the court of sentencing, the Government for an independent determination by the court of sentencing, the Government maintained an implicit obligation to seek enforcement of its contract. The misconstrue the specific terms and conditions of the contract Petitioner's signed to resolve the charged allegations this breach of contract abridged the Petitioner's due process right.

(b) **Sixth Amendment Right to Counsel Abridgment:** Petitioner Hernandez conviction and sentence were taintad as Petitioner did not receive effective assitance of counsel during the appellate review phase of the underlying criminal procedings. If appellate counsel had raised the issues raised herein, justice would have been accomplished and Petitioner more likely would not be seeking post relief.

I

STATUTORY LIMITATIONS

Ms Hernandez motion is in excess of the statutory period in which to petition for a Section 2255 Petition due to her inability to read, write, and Speak English and her lack of understanding of the U.S. Criminal System . Ms Hernandez is a Mexican Nationality with a limited education. She was represented by appoint Counsel Richard Rodriguez for the process of her case, in which she was sentence to 188 months imprisonment.

After Ms Hernandez was sentence to 188 Motion Counsel Rodriguez never file her appeal even do Ms Hernandez mention to him several times that she did not agree with the sentence impose but counsel was so ineffective that the only thing he mention was that there was nothing else to do and he never file her appeal.

Ms Hernandez did not learn until the end of 1997 that she can appeal her case this was through another inmate who speaks Spanish, that there were alternatives to an appeal and file hers but as per the court it was denied do to been untimely.

But petitioner Hernandez was never aware that she can file a § 2255 motion to present all her grounds to the court and again she was deprived of her Constitutional Rights for not knowing the law of the United States and a one year period of limiations has pass.

FACTS

On August 28, 1996, an eight -count Superseding Indictment was filed in the Southern District of California charging Maria Conchita Hernandez and Socorro J Cabrera Borja in Count one with Conspiracy to Import Amphetamine, Marijuana , and Heroin , in violation of 21 U.S.C. §§952 and 963. The remaining counts charge both defendants as follows: Count Tow Aiding and Abetting Importation of Amphetamine, in violation of 21 U.S.C §§ 952AND 960 AND 18 U.S.C. § 2 Count Three, Aiding and Abetting Importation of Marijuana and Heroin in violation of 21 U.S.C. § 846 and 841 (a) (1); count Six Aiding and Abetting Possession of Amphetamine with Intent to Distribute, in violation of 21 U.S.C. § 841 (a)(1) and 18 U.S.C.

On December 2, 1996, defendant Cabrera Borja pled guilty to all eight counts of the Superseding Indictment..

On December 4, 1996 defendant Hernandez was convicted following a jury trial of all counts of the Superseding Indictment.

THE OFFENSE CONDUCT

The following account was derived from a review of the investigative material as well as discussions with the investigative agent , Assistant United States Attorney, and Defense counsel.

For all these reasons petitioner pray that this Honorable Court accept this § 2255 motion and grant petitioner the opportunity to be heard and allow her to have a reduce sentence and give her the opportunity to have an early release.

Counsel Rodriguez was appointed as counsel for Ms Hernandez. He represented her throught entry of her plea . Ms Hernandez motion for Section 2255 petition and evidentiary hearing on the bais that Mr Rodriguez representation was ineffective, thereby violating her Sixth Amendment rights

During the representation Ms Hernandez, Mr Rodriguez failed to provide any documents regarding the government's accusations and the defenses he intended to use at trial to her. Mr Rodriguez's explanation to Ms Hernandez for not providing documents regarding the prosectuion and defense of her case was that it was dangerous for her to have any documents.

Counsel Rodriguez failed to advise Ms Hernandez of the nature of the defenses he intended to use for her defense. Mr Rodriguez told Ms Hernandez that he was going to"prove her innocence" . but failed to advise her how he intended to do so.

Failure of counsel to provide advice may form a basis of a claim of ineffective assistance of counsel Libretti v U.S. 516 US 29 1995).

Ms Hernandez also had two prior felony convictions and Counsel was aware of those convictions and Mr Rodriguez did not discuss the impact of the prior convictions on sentencing with Ms Hernandez.

Petitioner was never aware of the process of her case counsel was so ineffective that never help petitioner Hernandez on her case, petitioner feel that she was deprived of her constitutional rights by not having the effective assistance of her counsel.

MEMORANDUM IN SUPPORT

Comes now petitioner pro se, and respectfully submits this memorandum in support of the motion to correct her illegal sentence imposed using sentencing factors and conduct considered relevant conduct in violation of her Sixth Amendment Right in the Constitution and her due process rights of the judicial system. Petitioner presents this memorandum in support of her affidavit, and pray that this Honorable Court accept this Motion and Grant petitioner the opportunity to be heard.

Petitioner did not agree with the sentence impose and she requested counsel several times to rebutle the presentence report, but counsel was so ineffective that never took the time to help petitioner in the process of her case.

Petitioner never agree to the drug amount and mention to counsel several times but counsel was so ineffective that never rebutle all petitioner's arguments.

> [D]rug quantity is an element must always be pleaded and proved to a jury or admitted by a defendant to support conviction or sentence on an aggravated offense under § 841 (b)(1)or-(b)(1)(B). If a defendant only on a lesser unquantified drug charge, he must be sentenced pursuant to § 841 (b)(1)(C) which generally provides no minimum mandatory sentence.

GUILTY PLEA. Because the defendant was misinformed as to his right to have the charged rgu quantity proved to a jury and because he did not admit drug quantity at her plea allocution. Her guilty plea to an aggravated § 841 (b)(1)(A) offense was not knowing, voluntary or sufficient to support the judgment of conviction." the Court concluded.

Furthermore , because the circumstances of this case do not show taht the defendant would have pleaded guilty to the offense had he been properly

I. Ineffective assistance of Counsel

It is axiomatic that the Sixth Amendment guarantees the right to the effective assistance of counel. Strickland v Washington, 466 U.S 668, 104, S. Ct. 2052, 80 L Ed 2d 674 (1984). This right guarantees that criminal defendants will receive assitance of counsel which will not be reddled with error and incompetnece to the point at which it constitutes a violation of the right to have an attorney. "Counsel can ....deprive a defendnat of the right to effective assistance of simply by failing to render adequate legal assistance. Id., at 686

A claim of ineffective assistnace of counsel is a mixed question of law and fact reviewed de nove. United States v Angelone, 894 F.2d 1129, 1130 (9th Cir 1990). To prevail on such a claim under Strickland a petitioner msut establish (a) that his counsel's representation was outside the wide range of professionally competent assistance, and (b) that she was prejudiced by reasons of his counsel's representation. Strickland, 466 U.S. at 687-88. An Attorney's performance is deficient fi it falls below an "objective standar of reasonablenes. "Strickland 466 U.S. at 688.

In the present case, attorney limited understanding of petitioner's clients's transactions and the pertinent procedures and regulations prevented counsel from rising to the "range of competence demanded of attorney.s" Hill , supra.

2.FAIR AND JUST REASON

It has been said that the term" fair and jsut reason" lacks any presense of scientific exactness" United States Barker, 514 F2.d 208, 220 (D.C. Cir 1975). Nonetheless, this court has attempted to provide shape to this term by holding that a court shall" vacate a plea of guilty shown to have been unfairly obtained or given through ignorance, fear or inardvertence." United States v Rubalcaba , 811 F.2d 491, 493 (9th Cir 1986) (quoting Kercheval v United States 274 U.S. 220 224, 47 S. Ct 582 71 LEd. 1009 (1927).

It is an obvious conclusion from the declaration of attorney that if he had convinced his client to delcare the case was indefensible he believed that he could not defend the case. Upon reaching that conclusion, he must convice hsi client to plead quilty or proeed to trail, whcih was schedule the next day.

3.VOLUNTARINESS

The concept of ineffective assistanceeof counsel also applies to guilty pleas. United States v Keller 902 F.2d 1391, 1394 (9th Cir 1990). Where a defendant enters a plea of guilty upond the advice of counsel "the voluntariness of the plea depends on whether counsel's advice was within the range of competnence demanded of attorneys in criminal cases "Hill 474 U.S. at 56. Indeed. "During all critical stages of a prosecution which must include the plea bargaining process, it is counsel'd duty to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution. Those obligations ensure tht the ultimate authority remains with the defendant 'to make certain fundametnal decisions regarding the case, as to whether to pled guilty, waive a jury , testify in his or her own behalf or take an appeal" Nunes v Mueller, 350 F.3d 1045, 1053 (9th Cir 2003). To show prejudice in the context of a plea agreement. " the defendant must show that there is a reasonable probability that, but for counsel's errors . she would not have pleaded

It has long been recognized that " a guilty plea is a grave and solemn act to be accepted only with care and discernment." Brady v United States 397 U.S. 742 , 748 90 S. Ct 1463, 25 L. Ed. 2d 747 (1970) . By pleading guilty, a defendant waives several fundamental Constitutional rights including the Fifth Amendment right not to be a witness against herself and her Sixth Amendment right to a jury trial. She releases the government from its burden of having to prove her guilty beyond a reasonable doubt. And she forsakes her right to be confronted with the witnesses against her. Brady 397 U.S . At 748.

Accordingly, a guilty plea unequivocally must be voluntarily and know-wingly made. Boykin v Alabama 395 U.S. 238, 242-43, 89 S. Ct. 1709 23 L. 2d 274 (1969). If a defendant's guilty plea is not equally voluntarily and knowing, it has been obtained in violation of due process and is there-fore void." McCarthy v United States 394 U.S. 459, 22 L.Ed. 2d 418, 89 S. Ct. 1166 (1969). The test for determining the voluntary and intelligent choi among the alternative courses of action open to the defendant. " Hill v Lockhart, 474 U.S. 52, 56, 88 L. Ed. 2d 203, 166 S. Ct 366 (1985).

In accordance with these principles , Rul 11 (d) of the Federal Rules of Criminal Procedure provides that a defendant may withdraw her quilty plea prior to sentencing whenever there is a "fair and just reason" for doing so United States v Nostratis, 321 F.3d 1206, 1208 (9th Cir 2003).

While a defendant does not always have a right to withdraw her plea of guilty, there is no limitation on the withdrawal and such a request should be "freely granted" by the district Court United States v Navarro -Flores, 628 F.2d 1178, 1183 (9th Cir 1980); United States v Castello 724 F.2d 813, 814 (9th Cir 1984). A district court's decision whether to grant a motion for withdrawal of a guilty plea is reviewed by this court for abuse of discretion. United States v Turnipseed, 159 F.3d 383, 387 (9th Cir. 1998). See Nostratis 321 F.3d at 1208 n. 1.

and would have insisted on goint to trial." Hill474 U.S. at 59 United States v Baramdyka,95 F.3d 840, 844 (9th Cir 1996). A claim of ineffective assistance of counsel is generally not cognizable on appeal unless "the recored is sufficiently complete to allow the appellate court to decide the issue." United States v Swanson., 943 F.2d 1070, 1072 (9th Cir 1991). In the instant case, the recored is sufficient for this court to review Petitioner's claim .

Petitioner was never aware of the consequences of her going to trail counsel never explain to petitioner that by signing the plea agreement she was waiving all her constitutional rights.

Petitioner's shall "vacate a plea of guilty shown to have been unfairly obtained or given through ignorance fear or inadvertence. United States v Rubalcaba, 811 F.2d 491, 493 (9th Cir1986) (quoting Kercheval v United States 274 U.S. 220 , 224 47 S Ct. 582, 71 LEd 1009 (1927).

Petitioner received no benefit in exchange for her guilty plea Pursuant to Blakely and Booker , Defendant was entitled to be sentenced only based on her factual admissions and resulting in a base level_____. The total offense level was calculated with a base offense level___ for the elements of the offense level of ____ in Criminal History Category I under the 1998 Guidelines Manual "any fact (other than a prior conviction which is necessary to support a sentence exceeding the maximum authorized by the facts established by a plea of guitly or a jury verdict msut be admitted by the defendant or proved to a jury beyond a reasonable doubt United States v Booker, 543 U.S. ___,125 S. Ct 738 at 756 (Jan 12, 2005)

SENTENCING ERRORS REQUIRE REMAND.

A. The Sentencing Must be Vacated Because The District Court Failed to Rule On the Specific And Detailed Factual Objections To The PSR Under F.R.Cr.P Rule 32.

F.R.cr. P , Rule 32, requires a Court to rule on unresolved objections to the pre-sentence report before sentencing, Merely imposing sentence is not a sufficient resolution. United States v Carter 219 F.3d 863 867-68 (9th Cir 2000); United States v Standard.207 F.3d 1136, 1142 (9th Cir 2000).

Defense counsel filed factually detailed objctions to the PSR in this case, These objections ranged from specific challenges to the Government's mis-characterization of the exact nature of the case. Counsel never took the time to explain petitioner the Presentence Report cousnel was so ineffective that never rebutle to the objections to the Presentence Report. And the mere fact that the district Court failed to resolve the objections requires to vacate petitioner's sentence.

The district court never explicitly stated its findss and the resolution of the objections. Merely imposing sentence was not a sufficient resolution. United States v Carter 219 F.3d 863, 867-6 8 (9th Cir 2000) United States v Standard 207 F.3d 1136, 1142 (9th Cir 2000).

DEFENDANT WAS SENTENCED BASED ON MATERIALLY INCORRECT INFORMATION

Defendant's right to due process include the right of not" be sentencec on the basis of materially incorrect information " United States v Cantrel 433 F.3d 1269, 06 Cal. Daily Op. Serv 396, 2006 Daily Journal D.A.R 565 ((TH Cir Jan 13, 2006) See also United States v Petty, 982, F.2d 1365 70-(9th Cir 1993), amended by 992 F.2d 1015 (9th Cir 1993).

For all these reasons petitioner pray that this Honorable Court accept this §2255 Motion and vacate petitioner's setnence and give her the opportunity to have an early release.

Defendant's right to due process were violated because she was sentenced based on materially incorrect inforamtion .

UNDER U.S.C. § 3553(C) THE COURT ERRED BY NOT STATING ITS REASONS FOR IMPOSING DEFENDANT'S SENTENCE.

Pursuant to 18 U.S.C § 3553 (c) a district court must provide a "specific" statement of reason for its decison, In U.S. v Price 51 F.3d 175 (9th Cir 1995), the sentencing court adopted the PSR calculations, and sentenced the Defendant to ___months of imprisonment without stating its reasons for imposing such a sentence.

In imposing petitioner's sentence, the Court stated that if found the PSR to be accurate . The Court adopted the PSR's findings, and imposed a ___months sentence. This too is an error and requires remand 18 U.S.C § 3553 (c) mandates that the court at the time of sentencing state reasons for imposing the sentence if it exceeds 24 months.

Here, the Court did not specifically state the reasons for imposing petitioner's sentence other than adopting the PSR recommendations In U.S. v Vallejo 69 F. 3d . 992, 993 (9th Cir 1995) , the trial court similarly said; "It will be the sentence of the court based on all the papers... based on everythign I've read... it will be ___months. The appellate court vacated and remanded the sentence because the district court failed to explain its ruling as required by 18 U.S.C.§ 3553 (c) Id. at 69 F.3d 995, See also U.S. v Real Hernandez 90 F.3d 356 (9th Cir 1996) ("with the knowledge that the court has in this particular case" is inadequate in regard to § 3553 (c)(requirements). That the Court below adopted the PSR where reasons for imposing the sentence wre stated stills does not comply with 18 U.S.C § 3553 (c). In U.S. v Prince 51 F.3d 175 (9th Cir 1995) , the sentencing court adopted the PSR recommendations. This was held inadquate reasoning under the statute and the matter to be vacated.

Petitoner pray that this Honorable Court grant a hearing and give petitioner the opportunity to be heard, and allow the truth to comeforward on Campusano v U.S. 442 F.3 770, When a claims that his attorney failed to file a requested notice of appeal, the following proceedings will ensue (1) a hearing before the district court pursuant to 2255 to determine whether the client requested the appeal: (2) an appeal from the district court's ruling should either party seek one; and (3) a direct appeal if the defendant did in fact requeste that a notice of appeal be filed. The approach advocated by the government and the district court would entail the following (1) a proceedign before the the district court pursuant to 2255 in whcih the district court may dismiss the motion if the court finds that any appeal would have been meritless (2) an appeal from the district court's ruling, should either party seek one, and (3) a direct appeal if the defendant prevails on his ineffective assistance challenge.

As the Supreme Court has stated "[t]hose whose right to appeal has been frustrated should be treated exactly like any other appeallants they should not be given an additional hurdle to clear just because their rights were violated at some earlier stage in the proceedings ." Rodriguez v United States 395 U.S. 327 , 330 89 S. Ct. 1715 23 L.Ed. 2d 340 (1969) The concern animation Flores-Ortega that defendants not be forced by attorney error to accept "the forfeiture of a proceeding itself" is a powerful one even where the defendant is the only person who believes an appeal would be worthwhile.

Petitioner was never in agree with the sentence impose she ask counsel several times to file an appeal but counsel refuse to do the filing and all this deprived petitioner of her constitutional rights and for all these petitioener feels that this Honorable Court should Grant a re-hearing

As seen on Campusano v U.S. 442 F.3d 770 (2nd Cir 2006). The Sixth Amendment to the United States Constitution provides that [in]all criminal prosecutions, the accused shall enjoy the right .....to have the Assistance of Cousnel for his defence "It has long been recognized that the right to counsel is the right to the effective assistance of counsel McMann v Richardson 397, U.S. 759, 771 n, 14, 90 S. Ct 1441 25 L.Ed. 2d 763 (1970). Under teh familiar two-part test of Strickland v Washington 466 U.S. 668 A defendant claiming ineffective assistance of counsel must demonstrate that the presentation (1) "Fell below an objective standard of reasonableness

At the instant case counsel never explain to petitioner that she could appeal her, case , only thing he keep saying is that she did not had nothing to appeal and if she appeal the government was giving her more jail time and been afraid petitioenr sign the waiver fee that was in the plea agreement induce by her counsel, In Flores -Ortega, the Supreme Court applied the Strickland test to claims that counsel was constitutional ineffective for failing to file a notice of appeal 528 U.S. at 476-477 120 S. Ct. The Flores-Ortega court held that a lawyer who disregards a defendant's specific insturctions to file a notice of appeal acts in a manner that is professionally unreasonable, id at 447, 120 S Ct 1029, and that where counsel's error leads to teh forfeiture of a proceedings itself. prejudice will be presumed id. at 483-84.

> **When counsel fails to file a requested appeal, a defendant is entitled to a new appeal without showing that his appeal would likely have merit"" It(quoting Peguero v United States.**

For all these reasons petitioner pray that this Honorable Court accept this motion and grant petitioner the opportunity to be heard and pray that this court allow her to have her appeal, or a re-sentence and to lower her sentence

As this Court repeatedly held that, under the Sixth Amendment any fact that exposes a defendant to a greater potential sentence must be found by a jury, not a judge, and established beyond a reasonable doubt not merely by a preponderance of the evidence. While this rule is rooted in longstanding common-law practices, its explicit statement in our decision in recent. In Jones v United States 526 U.S. 227 (1999) we examined the Sixth Amendment's historical and doctrinal foundations and recognized that judicial factfinding operating to increase a defendant's otherwise maximum punishment posed a grave constitutional question. Id at 239-252 While the Court construe the statute at issue to avoid the question. the Jones opinion presaged our decision some 15 months later in Apprendi v New Jersey, 530 U.S. 466 (2000).

Petitioner feel that not having the effective assistance of her counsel deprived her of all her constitutional rights, counsel never explain petitioner of the constitutional rights counsel never explain petitioner the plea agreement, counsel never explain petitioner the presentence report counsel was so ineffective that never took the time to look for mitigating factors to help petitioner in the process of her case and all these constituted to an ineffective assitance of counsel.

The Sixth Amedment to the United States Constitution insures effective assistance of legal representation to all criminal defendants. The right to competent counsel msut be assured every man accused of crime in Federal Court State of Union Address , John F. Kenndy , January 14, 1963 U.S. Code Cong, and Admin, News, 2990. An abridgment of this core, constittuional right meets the "error of constitutional magnitude outlined in Addonizio

Petitioner pray this Honorable Court to Accept this Motion and Grant Petitioner the Opportunity to be heard and allow her to have a sentence reduce and allow her to have a Re-hearing and let the truth comeforward

Petitioner feel that not knowing the law of the United States she was deprived of her constitutional rights, counsel was so ineffective that never look into the case to help petitioner in the process of the case and cause a great hardship to petitioner.

As stated on Strickland v Washington 466 U.S. 668, 104 S Ct. 2052, 2064 74, 80 L. Ed. 2d 674 (1984).

Claims of ineffectiveness of counsel in a criminal case are evaluated under a two-prong test set forth in **Strickland** . **To succeed on any claim** of ineffective assistance of counsel claim. the defendant must show: (1) that his attorney's representation fell below an objective standard of reasonableness; and (2) due to counsel's unprofessional errors that the results of the proceedings would have been different.

Strickland 466 U.S. 687-688. Judicial scrutiny of counsel's performance must be highly deferential, and a fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. **80 l.ed. 2d at 682.** The Court also concluded that strategic choice made by counsel after thorough investigation of law and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support limitations on investigation.

advised the error was not harmless, the court said. As reported in the "clr'Vol. 77 No. 21.

The Court in its determination held that "[I]n Apprendi, the Supreme Court held that any fact, other than a prior conviction that increases a **PENALTY for** a crime beyond the prescribed statutory maximum must be submitted to a jury and proven beyond a reasonable doubt

The Court in the wake of apprendi, held that "if the type and quantity of drugs involved in a charged offense may be used to increase a sentence above the statutory maximum for an indeterminant quantiy of drugs then the type and quantity of drugs is **an element** of the offense that must be charged in the indictment and submitted to the jury. "Citing United States v Thomas, 274 F.3d 655 (2nd Cir 2001). As expressed in United States v Gonzalez, supra, the court clarified that "[t]he addition of a drug quantity element to an 841 offense... results a diffe-rent criminal charge from the same offense pleaded to without regarg to quantity element to an 841 offense results in a different criminal charge from the same offense pleaded without regarg to quantity." Thus, a violation of 21 U.S.C. § 841 (a)(with no specified quantity of drugs , constitutes a different crime with a specified quantity , and the applicable penalty varies accordingly-- the Court said. Here the increase sentence meant that the defendants were effectively convicted for a crime possession of a specified quantity--for which she was not indicted "

The Court found that the error here was "**JURISDICTIONAL DEFECT AND CANNOT BE WAIVED.**

GROUND II INDUCE PLEA BASED ON AMBIGUOUS PLEA AGREEMENT

Petitioner is not an expert in the law counsel never explain to petitioner the plea agreement counsel was so ineffective that never took the time to go over the plea agreement with petitioner , counsel is very aware the petitioner is not an expert in the law and that she doesnt understand the complicated process of the law, counsel induce petitioner to sign the plea agreement by telling her if she did'nt sign the plea agreement the government was giving her more jail time, and been afraid of this petitioner agree to everything and answer with "YES" and "NOS" to the court.

As Seen in U.S. v Borders , 992 F.2d 563 (5th Cir 1993). Trial counsel who induced defendant to plead quilty to a plea agreement which was ambiguous, amounted to ineffective assistance of counsel.

Petitioner was never aware of the significance of the plea agreement she was not aware that by signing the plea agreement she was waiving all her constitutional rights, and petitioner did not sing the plea knowingly and voluntary.

U.S. v STREATER, 70 F.3d 1314 (D.C. Cir. 1995)

Defendant's quilty plea was not made knowingly or voluntarily where it was induced by counsel's faulty legal advice counsel rendered ineffective assistance of counsel which induced defendant to plead guilty and made guilty plea involuntarily and unintelligent.

Defendant's quilty plea was not made knwoingly or voluntarily where it was induce by counsel's faulty legal advice, At the instant case counsel neve explain to petitioner the plea agreement counsel never took the time to go over the plea agreement with peitioner.

Counsel keep telling petitioner that she was not going to do some much time that he was proof that she was less culpable but that she

Petitioner pray this Honorable Court to Accept this Motion and Grant Petitioner the Opportunity to be heard and allow her to have a sentence reduce and allow her to have a Re-hearing and let the truth comeforward

Petitioner feel that not knowing the law of the United States she was deprived of her constitutional rights, counsel was so ineffective that never look into the case to help petitioner in the process of the case and cause a great hardship to petitioner.

As stated on Strickland v Washington 466 U.S. 668, 104 S Ct. 2052, 2064 74, 80 L. Ed. 2d 674 (1984).

Claims of ineffectiveness of counsel in a criminal case are evaluated under a two-prong test set forth in **Strickland** . **To succeed on any claim** of ineffective assistance of counsel claim. the defendant must show: (1) that his attorney's representation fell below an objective standard of reasonableness; and (2) due to counsel's unprofessional errors that the results of the proceedings would have been different.

Strickland 466 U.S. 687-688. Judicial scrutiny of counsel's performance must be highly deferential, and a fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. **80 l.ed. 2d at 682.** The Court also concluded that strategic choice made by counsel after thorough investigation of law and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support limitations on investigation.

Petitioner seeks to vacate and set aside her sentence due to errors of constitutional magnitude occurring at her sentencing and as part of her right to appeallate review. These errors were causative result of acute violations of the Petitioner's Fifth Amendment rights as well as petitioner's denial of effective assistance of counsel in violation of the Sixth Amendment to the U.S. Constitution but for these abreidgments petitioner would not have suffered the detriment of these errors and more likely than not would not have suffered the detriment of these errors and more likely than not would have been acquitted of much of the charged conduct.

Petitioner feel that not having the effective assistance of counsel she was deprived of her constitutional rights petitioner did not agree with the sentence impose from beginning to end she mention to counsel that she did not agree with the sentence impose and that she wanted counsel to file her appeal but counsel was so ineffective that never help petitioner petitioner feel that she was deprived of her right to appeal because counsel never explain to petitioner that he did not file her appeal.

Petitioner also did not agree as to why the district court did not granted her the two points for the safety valve , also why she did not got credit for the three points for acceptance of responsability petioner has done most of her time and she pray that this Honorable Court Grant her the opportunity to be heard and allow the true to comeforward.

Petitioner Sixth Amendment to the United States Constitution insures effective assistance of legal representation to all criminal defendants "The right to competent counsel must be assured every man accused of crime in Federal Court " State of Union and Admin News 2990. An abridgment of this core, constitutional right meet the "error of Constitutional magnitude outlined in Addonižio.

Petitioner Hernandez feels that not having the effective assistance of counsel was deprived of her constitutional rights.

Finally the error affected the fairness of petitioner proceedings In discussing the fairness of the result in Blakely, the Court Stated.

> Any evaluation of Apprendi's "fairness" to criminal defendants must compare it with the regime it replaced in which a defendant with no warning in either his indictment or plea would routinely see his maximum potential sentence balloon from as little as five years to as much as life imprisonment see 21 U.S.C 841 (b)(1)(A)(D).based on facts extracted after trial from a report compiled by a probation officer who authored the PSI.

In this case the petitioner was held accountable for a drug amounts of which she neither admitted to, nor had any knowledge of. Furethermore the petitioner was held accountable for an amount that was determined by use of the wrong standard of proof.

Despite the general referennce in the indictment as to the nospecific type of drugs (the indictment did not specify provision. See also **NORBY , and U.S. v AGUAYO DELGADO** No 99-4098 18 July 2000, 8th Circuit

The Count(s) of which the petitioner was convicted neither stated the specific amount, type or purity, nor made any reference to the penalty section of 21 U.S.C. 841 (b). Therefore the court was required under the **RULE OF LENITY** and by the omissions in the record, to sentence the defendant to the lowest level associated with his crime and the 841 (a)

To reach this higher statutory range of penalty, it must first be established by the Government what the amount, purity, and type were and that they were in fact those required for the statutory sentencing level to be applied. Absent specific and knowing admission by the Petitioner the burden was on the Government to charge the 841 (b)(1) penalty sections and then to establish and for the sentencing level. However under post-guidelien and (for the jury to find) the elements necessary to support the charge and sentencing level. However, under the petitioners counsel was powerless to challenge this discrepancy and lack of proof resigned to the vact that the court coudl make these findindgs after conviction. Under the (hindsight) applciation of **APPRENDI** this was a violation of the petitioner's constitutinal rights See **U.S. v ROGERS no. 99-15150 Supra**

As stated by the **DOGGETT** court "if the government seeks enhanced penalties based upon amount of drugs under 21 USC Section 841 (b)(1)(A) or (B) the quantity must be stated in the indictment and submitted to a jury for a finding of proof beyond a reasonable doubt.

The view that type and amount are elements of the crime to be found by the jury and or on the reasonable doubt" standard has been the prevailing view of the law since the well before the Guidelines See **U.S.v ALVAREZ 75 F.2d 461 (Ca 11th Cir 1984).** holding that ... while the statutory definition of the offense makes all possession unlawful, it provides for gradation of punishment according to particula elements such as value weight, type etc). The Alvarez court held further that such weight or type an element of the offense, and in the absence of an allegation of [other factors] the indictment supported [only] a sentence for the lessor offense enumerated in the statute "Applying this to the drug offenses, the court held that "since the quantity [or type] of the substance constitutes a critical element of the offense... and no quantity was specifically alleged... the enhanced sentences sentences are invalid. See also **CARLES -JONES v U.S.** (Ca. 10 June 2000) 120 S Ct 2739 to allow the administrative regulations of the Guidelines to overrule case law interpretation of existing law is unconstitutional. See also **U.S. v DENINO** 29 F.3d 572, 580 (Ca 1994).

For all these reasons petititoner feel that not having the effective assistance of counsel she was deprived of all her constitutional rights petitioner pray that this Honorable Court accept this Motion and Grant petitioner the opportunity to be heard and allow the truth to come forward petitioner did not agree with the sentence impose and she mention her counsel several times but counsel was so ineffective that never help Hernandez in her case at all.

Petitioner Hernandez undestands that her status of limitation has finished and she was done all ready 11 years of her time and she is getting release on 2009 petitioner pray that this Honorable Court accept this motion and reduce her sentence to a lower levels.and pray that this Honorable court grant petitioner an early release.

The Due Process Clause requires that the defendant's rasonable expectation of benefit be respected, inasmuch as it precludes enforcement of an unconsionable contract.

Petitioner pray that this Court consider that petitioner has done more than half of her time and that she only asking for a sentence reduce do to the all ineffective assistance of counsel that deprived all this years of her constitutional rights, counsel fail to rebutle the two level enhancements for the safety valve, counsel fail to rebutle the three performance remains simply reasonableness under prevailing professional norms).

For all of the failures of Petitioner's counsel , this Court must decide in light of all the circusmtances facing counsel. whether his conduct fell within the wide range of professionally competent assistance expected of an attorney. Huynh v King. 95 F.3d 1052, 1056 (11th Cir 1996) Strickland supra 466 U.S. at 690). The Petitioner msut prove that counsel's performance was unreasonable under prevailing professional norms, and that the challenged actions or omissions were not sound strategy. Strickland 466 U.S. at 688-89.

"It is the client's right to expect that his lawyer will use every skill expend every energy , and tap every legitimate resource int he exercise of independent professional judgement on behalf of the client and the under-taking representation of the client's interest. Frazar v United States 18 F.3d 778, 785 (9th Cir 1994). "Defense counsel must do his utmost to bring his legal acumen to bear on behalf of teh defendant keep the defendant fully informed of developments in the case and consult with the defendant on all major decisions to be made.... and, at the bottom, serve as a vigorous and devoted advocate of the defendant's cause.:

Petitioenr prayt that this court Grant Petitioner the opportunity to have a sentence reduce and allow her to go back with her family.

Respectfully Submitted on this 8 day of December, 2007

BY: Maria Conchita Hernandez
MARIA CONCHITA HERNANDEZ
FEDERAL CORRECTIONAL CAMP
P.O. BOX 5100
ADELANTO, CA. 92301

levels for the acceptance of responsability as it said on the PSI

adjusted offense level

adjusted for acceptance of Responsability: The defendant chose to make no statement about her involvement in the instant offense, stating only that she was innocent. In light of this , no reduction pursuant to USSG. § 3E1.1 is warranted for acceptance of responsability, petitioner feel that this is an unfair sentence do to the fact that she did not know anything about the law and her counsel never advise her all the process of her case and all these deprived her of a lower sentence, petitioner pray that this Honorable Court grant petitioner this three levels that would put her base level to 31 giving her a sentence of 108-135 and the time that she has done will put her in an early release with all her good credit and her time done. Petitioner was never aware of the process of her case petitioner pray that this Honorable Court accept her motion and grant her an early start.

RESPECTFULLY SUBMITTED ON THIS 8 DAY OF DECEMBER, 2007.

Maria Conchita Hernandez

Maria Conchita Hernandez 70625-198
Federal Correctional Camp
P.O. BOX 5100
Adelanto, ca. 92301

CERTIFICATE OF SERVICE

This is to certified that I Maria Conchita Hernandez deposit this § 2255 Motion on a Federal Correctional Camp Mailbox in the City of Adelanto, California on this 8 day of December, 2007

Maria Conchita Hernandez

Maria Conchita Hernandez # 70625-19
Federal Correctional Camp
P.O. Box 5100
Adelanto, Ca. 92301

VISIT US ON-LINE AT www.casd.uscourts.gov !!

CASE: 961262-CR-CRO Doc #: 00078 Name Id: 175957 Imported: 08/10/1999 13:30 RYC

MARIA HERNANDEZ 70625-198
FCI DUBLIN
5701 8TH STREET
CAMP PARKS
DUBLIN CA 94568

INTERNET ACCESS NOW AVAILABLE!
Visit our web site at www.casd.uscourts.gov. You'll find general filing procedures, Local Rules, district and magistrate judge calendars, frequently requested General Orders, forms, answers to frequently asked questions, general court information, vacancy announcements, directions, etc. The Adobe Acrobat Reader, which can be accessed on our home page and is free of charge, is required for viewing certain documents.

PACER (Public Access to Court Electronic Records)
PACER is a nationwide on-line computer service that provides users with an electronic case history without leaving the comfort of their office. Cases can be researched by party name or case number; and docket sheets can be printed in your office. USER BENEFITS: Reduced copy costs, reduced research fees, quicker information retrieval, fewer trips to clerk's office. Access is possible with modem speeds up to 33.6K and communications software. The user fee is $.60 per minute. To establish access, contact the PACER Billing Center at (800) 676-6856 or register on-line at www.pacer.psc.uscourts.gov. Contact the Clerk's Office Help Desk at (619) 557-5412 for local user support.

You could have received this notice yesterday by fax

Authorization to Send Orders and Judgments by Facsimile Transmission

The Clerk of Court for the Southern District of California is authorized to transmit notice of entry of judgment or orders under Fed.R.Civ.P. 77 and Fed.R.Crim.P. 49 by facsimile transmission of judgments, orders or notices in any case in which this capability exists and the undersigned appears as attorney in charge. I understand that this *electronic* notice will be in lieu of notice by mail. The following telephone number is dedicated for facsimile transmission:

Fax Phone #	____________	Firm Name	____________
Phone #	____________	Attorney Name	____________
State Bar #	____________	Street Address	____________
Signature	____________	City, State, Zip	____________

Just complete and return the authorization above. It's FREE and it's FAST! Mail or fax to:

United States District Court — or — Fax:
Roberta Westdal, Clerk of Court — (619) 557-5175
880 Front Street, #4290
San Diego, CA 92101-8900

FILED
99 AUG -9 PM 3:55
BY: DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, vs. MARIA CONCITA HERNANDEZ, Defendant.	CASE NO. 96cr1262-J ORDER DENYING MOTION TO DELETE SUPERVISED RELEASE AND REQUEST TO PROCEED IFP [docket no. 76 and 77]

The Court has received a "Motion Order to Delete Supervised Release Pertaining to Coun Count: Five From the Judgment" from Defendant Maria Conchita Hernandez. On March 24, 1997 Defendant was sentenced for eight counts of drug related charges, and a judgment was issued on the following day, March 25, 1997. This Court denied a certificate of appealability on September 16, 1998 because Defendant Hernandez failed to timely file her appeal. The Ninth Circuit, on November 13 1998, denied her appeal because it was not timely. In the Ninth Circuit's order, it stated that to the extent that Defendant Hernandez is trying to raise an ineffective assistance of counsel claim, she should raise it in the form of a habeas corpus petition under 28 U.S.C. § 2255.

Defendant Hernandez now tries to vacate one of the counts she was convicted of in this present motion. The Court **DENIES** this motion because her time for a direct appeal has passed. If Defendant wishes to pursue a habeas corpus petition under 28 U.S.C. § 2255, she must properly file a petition alleging that her sentence was imposed in violation of the Constitution or laws of the United States. However, Defendant Hernandez should note that generally, there is a one year period of limitations for the filing of a habeas petition under 28 U.S.C. § 2255. See 28 U.S.C. § 2255. As Defendant's judgment was entered on March 25, 1997, she had to file a habeas corpus petition by March 24, 1998.

CONCLUSION AND ORDER

For the reasons set forth above, the Court **DENIES** Defendant Hernandez's motion. Since the Court has denied the motion, it also denies Defendant Hernandez's request to proceed IFP.

IT IS SO ORDERED.

DATED: August 4, 1997

NAPOLEON A. JONES, JR.
United States District Judge

cc: All Parties

JS44

(Rev. 07/89)

CIVIL COVER SHEET

FILED
DEC 14 2007
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY CP DEPUTY

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Maria Conchita Hernandez

DEFENDANTS

United States of America

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Maria Conchita Hernandez
Federal Correctional Camp
P.O. Box 5100
Adelanto, CA 92301

ATTORNEYS (IF KNOWN)

'07 CV 2355 J

U.S. Attorney

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX (For Diversity Cases Only) FOR PLAINTIFF AND ONE BOX FOR DEFENDANT

	PT	DEF		PT	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business in This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2255

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT
- ☐ 110 Insurance
- ☐ Marine
- ☐ Miller Act
- ☐ Negotiable Instrument
- ☐ 150 Recovery of Overpayment &Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153Recovery of Overpayment of Veterans Benefits
- ☐ 160 Stockholders Suits
- ☐ Other Contract
- ☐ 195 Contract Product Liability

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectmant
- ☐ 240 Tort to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury- Medical Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/Accommodations
- ☐ 444 Welfare
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☒ 510 Motions to Vacate Sentence Habeas Corpus
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC881
- ☐ 630 Liquor Laws
- ☐ 640 RR & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710Fair Labor Standards Act
- 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt. Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (13958)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS - Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reappointment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities Exchange
- ☐ 875 Customer Challenge 12 USC
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State
- ☐ 890 Other Statutory Actions

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appelate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 **DEMAND $** Check YES only if demanded in complaint: **JURY DEMAND:** ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE Docket Number 96 CR 1262

DATE 12/17/07

[redacted]

(signature)